

(1) The contractor or any of its employees, agents, or subcontractors received, solicited, or arranged to receive any fee, compensation, gift (defined at 5 CFR 2635.203(b)), payment of expenses, offer of employment, or any other thing of value from any entity that is reviewed, audited, investigated, or contacted during the normal course of performing activities under the Medicaid integrity audit program contract.

(2) CMS determines that the contractor's activities are creating a conflict of interest.

(c) If CMS determines that a conflict of interest exists during the term of the contract, among other actions, CMS may:

(1) Not renew the contract for an additional term.

(2) Modify the contract.

(3) Terminate the contract.

[73 FR 55771, Sept. 26, 2008]

#### **§ 455.240 Conflict of interest resolution.**

(a) Review Board: CMS may establish a Conflicts of Interest Review Board to assist in resolving organizational conflicts of interest.

(b) Resolution: Resolution of an organizational conflict of interest is a determination by the contracting officer that:

(1) The conflict is mitigated.

(2) The conflict precludes award of a contract to the offeror.

(3) The conflict requires that CMS modify an existing contract.

(4) The conflict requires that CMS terminate an existing contract.

(5) It is in the best interest of the government to contract with the offeror or contractor even though the conflict of interest exists and a request for waiver is approved in accordance with 48 CFR 9.503.

[73 FR 55771, Sept. 26, 2008]

### **Subpart D—Independent Certified Audit of State Disproportionate Share Hospital Payment Adjustments**

SOURCE: 73 FR 77951, Dec. 19, 2008, unless otherwise noted.

#### **§ 455.300 Purpose.**

This subpart implements Section 1923(j)(2) of the Act.

#### **§ 455.301 Definitions.**

For the purposes of this subpart—

*Independent certified audit* means an audit that is conducted by an auditor that operates independently from the Medicaid agency or subject hospitals and is eligible to perform the DSH audit. Certification means that the independent auditor engaged by the State reviews the criteria of the Federal audit regulation and completes the verification, calculations and report under the professional rules and generally accepted standards of audit practice. This certification would include a review of the State's audit protocol to ensure that the Federal regulation is satisfied, an opinion for each verification detailed in the regulation, and a determination of whether or not the State made DSH payments that exceeded any hospital's specific DSH limit in the Medicaid State plan rate year under audit. The certification should also identify any data issues or other caveats that the auditor identified as impacting the results of the audit.

*Medicaid State Plan Rate Year* means the 12-month period defined by a State's approved Medicaid State plan in which the State estimates eligible uncompensated care costs and determines corresponding disproportionate share hospital payments as well as all other Medicaid payment rates. The period usually corresponds with the State's fiscal year or the Federal fiscal year but can correspond to any 12-month period defined by the State as the Medicaid State plan rate year.

#### **§ 455.304 Condition for Federal financial participation (FFP).**

(a) *General rule.* (1) The State must submit an independent certified audit to CMS for each completed Medicaid State plan rate year, consistent with the requirements in this subpart, to receive Federal payments under Section 1903(a)(1) of the Act based on State expenditures for disproportionate share hospital (DSH) payments for Medicaid State plan rate years subsequent to the